

**Assembly Bill No. 527**

\_\_\_\_\_

Passed the Assembly    September 9, 1999

\_\_\_\_\_  
*Chief Clerk of the Assembly*

\_\_\_\_\_

Passed the Senate    September 8, 1999

\_\_\_\_\_  
*Secretary of the Senate*

\_\_\_\_\_

This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 1999, at \_\_\_\_\_ o'clock \_\_\_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*

└

## CHAPTER \_\_\_\_\_

An act to amend Sections 939 and 939.2 of, and to add Section 939.22 to, the Penal Code, relating to grand juries.

## LEGISLATIVE COUNSEL'S DIGEST

AB 527, Baugh. Grand juries.

(1) Under existing law, a subpoena requiring the attendance of a witness before the grand jury may be signed and issued by the district attorney, his or her investigator or, upon request of the grand jury, by any judge of the superior court, for witnesses in the state, in support of the prosecution, for those witnesses whose testimony, in his or her opinion is material in an investigation before the grand jury, and for other witnesses as the grand jury, upon an investigation pending before them, may direct.

This bill would require, except as provided, the prosecution to advise any witness who is the subject of a grand jury investigation, through either a subpoena issued pursuant to this provision to the witness or a written notice to the witness or his or her counsel, if retained, as to certain specified information, including, among other things, that the witness is the subject of a grand jury investigation, and that the witness may have an attorney present during the grand jury examination. Because the bill would impose increased duties on local criminal justice systems that are equivalent to those imposed by the establishment of a new crime, it would create a state-mandated local program.

(2) Under existing law, no person is permitted to be present during the criminal sessions of the grand jury except the members and witnesses actually under examination, and certain other specified persons, including, among others, the district attorney, an interpreter, and the officer having custody of a prisoner witness while the prisoner is testifying.

This bill would authorize any witness before a grand jury who is or becomes the subject of a grand jury



investigation that may result in an indictment, or in an accusation for willful or corrupt misconduct in office, to have counsel present on his or her behalf while he or she is testifying. The bill also would create in any witness who is the subject of a grand jury investigation the right to disclose, in writing, exculpatory evidence to the prosecutor.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 939 of the Penal Code is amended to read:

939. No persons other than those specified in Article 3 (commencing with Section 934), and in Sections 939.1, 939.11, 939.21, and 939.22, and the officer having custody of a prisoner witness while the prisoner is testifying, are permitted to be present during the criminal sessions of the grand jury except the members and witnesses actually under examination. Members of the grand jury who have been excused pursuant to Section 939.5 shall not be present during any part of these proceedings. No persons other than grand jurors shall be permitted to be present during the expression of the opinions of the grand jurors, or the giving of their votes, on any criminal or civil matter before them.

SEC. 2. Section 939.2 of the Penal Code is amended to read:

939.2. (a) A subpoena requiring the attendance of a witness before the grand jury may be signed and issued by the district attorney, his or her investigator or, upon request of the grand jury, by any judge of the superior court, for witnesses in the state, in support of the prosecution, for those witnesses whose testimony, in his or her opinion is material in an investigation before the

grand jury, and for other witnesses as the grand jury, upon an investigation pending before them, may direct.

(b) (1) Except as provided in paragraph (2), the prosecution shall advise any witness who is the subject of a grand jury investigation, through either a subpoena issued pursuant to subdivision (a) to the witness or a written notice to the witness or to his or her counsel, if retained, as to all of the following:

(A) The witness is the subject of a grand jury investigation.

(B) The witness may have an attorney present during the grand jury examination.

(C) The witness has the right to disclose, in writing, exculpatory evidence, including the names and addresses of witnesses who possess exculpatory information, to the prosecutor.

(2) Paragraph (1) shall not apply if any of the following applies:

(A) The prosecutor is not able to notify the witness with reasonable diligence.

(B) A corporation is the subject of the investigation and the witness is an employee or officer of the corporation and the witness is not the subject of the grand jury investigation.

(C) The prosecutor determines during the grand jury hearing that a previous witness has become the subject of the grand jury investigation.

(D) The prosecutor obtains a waiver from the supervising criminal judge of the superior court upon proof that there are reasonable grounds to believe the notice would create an undue risk or danger to other persons or a reasonable possibility of destruction of evidence, or there is a strong suspicion of flight of the witness.

(E) The court issues a waiver to the prosecution upon a showing of good cause that the interests of justice would not be furthered by notifying the subject of the grand jury proceedings pursuant to this section.

SEC. 3. Section 939.22 is added to the Penal Code, to read:



939.22. (a) Any witness before a grand jury who is or becomes the subject of a grand jury investigation that may result in an indictment, or in an accusation pursuant to Section 3060 of the Government Code, may have counsel present on his or her behalf while he or she is testifying. Any counsel present before the grand jury pursuant to this subdivision shall comply with all of the following:

(1) Counsel shall not object to any questions asked of the witness or otherwise speak to the grand jury, but may advise the witness during the course of the examination.

(2) Counsel shall not disclose anything heard in the grand jury room.

(3) Counsel, or any law firm representing a witness pursuant to this subdivision, shall not represent more than one witness in the same proceeding.

(b) Subdivision (a) shall not apply if a corporation is the subject of the investigation and the witness is an employee or officer of the corporation and the witness is not the subject of the grand jury investigation.

(c) Any witness who is the subject of a grand jury investigation has the right to disclose, in writing, exculpatory evidence, including the names and addresses of witnesses who possess exculpatory information, to the prosecutor.

(d) The prosecuting attorney may make a motion to the presiding judge for sanctions against counsel who is representing a witness pursuant to subdivision (a) for any violation of this section and refer the violation to the State Bar of California.

(e) Nothing in this section shall be construed to grant a witness a constitutional right to counsel under the United States or California Constitutions nor grant any right to discovery for the subpoenaed witness.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty

for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



Approved \_\_\_\_\_, 1999

\_\_\_\_\_  
*Governor*

